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August 31, 2018

Via ECF

Honorable Lois Bloom, U.S.M.J.

U.S. District Court for the Eastern District of New York

22 Cadman Plaza East

Brooklyn, New York 11201

**Re: *Steven Barger v. First Data Corporation et al.*, Civil Case No. 1:17-cv-4869
Motion to Compel Responses to Requests for Admissions**

Dear Judge Bloom:

By letter motion Plaintiff requested the Court compel the deposition of First Data Senior Vice President EJ Jackson, or in the alternative compel responses to interrogatories and requests for production regarding Mr. Jackson [ECF No. 57]. The Court has set a status conference hearing for September 4, 2018.

On July 30, 2018 Plaintiff served its Second Set of Requests for Admissions on First Data. First Data responded on August 29, 2018. Among Plaintiff's requests were the following:

33. Admit that E.J. Jackson's initial base salary to be received from First Data when he was first hired by First Data exceeded \$350,000 per year.
34. Admit that E.J. Jackson's initial base salary to be received from First Data when he was first hired by First Data exceeded \$400,000 per year.
35. Admit that E.J. Jackson's initial base salary to be received from First Data when he was first hired by First Data exceeded \$450,000 per year.

First Data's response to each of the requests was the same:

First Data incorporates its General Objections and further objects to this Request on the grounds that it seeks information that is not relevant to the underlying claims or defenses at issue in this case. Information regarding Jackson's employment at First Data is the subject of a motion to compel that Plaintiff has filed in this action which has been opposed by Defendants. Defendants incorporate their Opposition to Plaintiff's Motion to Compel the deposition of E.J. Jackson filed on Friday, August 24, 2018 (*see* ECF No. 57). A status conference on Plaintiff's motion is scheduled for Tuesday, September 4, 2018.

Plaintiff's reasoning for the relevance of Mr. Jackson's starting salary information and hiring is set forth in its Motion to Compel [ECF No. 57] and is incorporated herein. Plaintiff was terminated as an SVP reporting to EVP Defendant Charron on the same day Mr. Jackson was hired as an SVP reporting to EVP Charron. First Data manages, budgets, and salaries and restructurings/reductions-in-force at the EVP level. Defendants have raised a "reduction-in-force" defense. The simultaneous hiring and firing of SVPs within Charron's organization on the same day is inconsistent with the reduction-in-force defense, especially when such defenses is based on cost-savings as a justification.

Information regarding Mr. Jackson's starting salary (as compared to Plaintiff's salary) is relevant to the question of the bona fides of the "RIF" as well as to the issue of whether the "RIF" is merely pretext for violations of the FMLA and the ADA. Responding to these requests for admission is not burdensome – Mr. Jackson's starting salary can easily be obtained from First Data's human resources system and the answers to these three requests should be a simple admit or deny. This information can only be obtained from either First Data or Mr. Jackson. These requests regarding Mr. Jackson's starting salary are within the scope of Rule 26(b).

Rule 36(a)(6) provides that Plaintiff, as the requesting party, "may move to determine the sufficiency of an answer or objection. Unless the court finds an objection justified, it must order that an answer be served. On finding that an answer does not comply with this rule, the court may order either that the matter is admitted or that an amended answer be served."

For the reasons set forth herein and in ECF No. 57, Plaintiff requests that the Court order First Data to admit or deny each of the Requests for Admission Numbers 33, 34 and 35 set forth above.

Very truly yours,
/s/ Shawn Shearer
Shawn Shearer
Counsel for the Plaintiff